IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8375 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD JAFAR @ ANNO MAHMAD HANIF SAIYAD

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 10/7/2000 Annexure : A passed by Respondent No. 1 which he has passed in exercise of

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on three different cases lodged in Bharuch City "A" Division Police Station, against the detenu. That cases are referred to in grounds of detention. Out of said three cases, two cases are registered under the provisions of the Bombay Prohibition Act and one case is registered under the provisions of Indian Penal Code. He also placed reliance on statements of three anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per papers, three statements are recorded on 18/6/2000, 20/6/2000 and 21/6/2000 respectively and all these three cases were verified by detaining authority on 6/7/2000, 5/7/2000 and 8/7/2000 respectively and on 10/7/2000, he passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms. Kachhuvah, the learned advocate for the petitioner has argued that in this case, the petitioner made a representation on 18/7/2000 through his Advocate to the Hon'ble Chief Minister and another representation of the same date i.e. 18/7/2000 made through his Advocate to the detaining authority. During the course of arguments, she produced a copy of letter received by the detaining authority. It is taken on record and as per this letter, the representation dt. 18/7/2000 was received by the detaining authority on 20/7/2000. It was decided on 29/7/2000. Thus there is a delay in forwarding the representation by the Jail Superintendent and that delay has not been explained by respondent no.3. Looking to this unexplained delay, order of detention is vitiated violating the provisions of Art.22(5) of the Constitution of India and thus the order of detention is bad in law and illegal.

5. In view of what is stated hereinabove, this writ

petition is allowed. The order of detention dt. 10/7/2000 passed by Respondent no. 1 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 12/10/2000. (H.H.MEHTA,J.)
ccshah